

LEGISLATURE OF NEBRASKA  
NINETY-SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1294**

Introduced by Preister, 5

Read first time January 23, 2002

Committee: Agriculture

A BILL

- 1 FOR AN ACT relating to pesticides; to adopt the Pesticide
- 2 Notification Act; and to provide severability.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1.   Sections 1 to 11 of this act shall be known  
2 and may be cited as the Pesticide Notification Act.

3           Sec. 2.   For purposes of the Pesticide Notification Act:

4           (1) Abutting property means property that has a boundary  
5 or boundary point in common with property on which pesticide is to  
6 be applied;

7           (2) Building operator means the owner, the owner's agent,  
8 or the building manager of any public building or, in the case of a  
9 public building which is leased to a tenant who is responsible for  
10 the operation of the building, the tenant or the tenant's building  
11 manager;

12           (3) Certified applicator has the definition found in  
13 section 2-2624;

14           (4) Commercial applicator has the definition found in  
15 section 2-2624;

16           (5) Commercial lawn application means application of a  
17 pesticide to the lawn of another person for hire or compensation;

18           (6) Department means the Department of Agriculture;

19           (7) Granular pesticide means any ground-applied solid  
20 pesticide that is not a dust or powder;

21           (8) Pesticide means a substance or mixture of substances  
22 intended to prevent, destroy, repel, or mitigate any pest or any  
23 substance or mixture of substances intended for use as a plant  
24 regulator, defoliant, or desiccant, including any biological  
25 control agent. Pesticide does not include any article that is (a)  
26 a new animal drug within the meaning of the Federal Food, Drug, and  
27 Cosmetic Act, 21 U.S.C. 321(v)(2), as such section existed on the  
28 effective date of this act, that has been determined by the United

1 States Secretary of Health and Human Services to be a new animal  
2 drug by regulation establishing conditions of use for the article  
3 or (b) an animal feed within the meaning of the Federal Food, Drug,  
4 and Cosmetic Act, 21 U.S.C. 321(w), as such section existed on the  
5 effective date of this act, bearing or containing a new animal  
6 drug;

7 (9) Residential lawn application means the application of  
8 general-use pesticides to ground, trees, or shrubs on property  
9 owned by or leased to the individual making such application.  
10 Residential lawn application does not include:

11 (a) Application of pesticides for the purpose of  
12 producing an agricultural commodity; or

13 (b) Application of pesticides around or near the  
14 foundation of a building for the purpose of indoor pest control; or

15 (10) Spot application of a pesticide means the  
16 application of pesticide in a manually pressurized or  
17 nonpressurized container of thirty-two fluid ounces or less to an  
18 area of ground less than nine square feet.

19 Sec. 3. Every retail establishment that sells pesticides  
20 for commercial or residential lawn application shall display a sign  
21 meeting standards established by the department under section 10 of  
22 this act in a conspicuous place. Such sign shall be placed as  
23 close as possible to the place where such pesticides are displayed.

24 Sec. 4. At least forty-eight hours prior to any  
25 commercial lawn application of a pesticide, the person or business  
26 making such application shall supply written notice, as described  
27 in rules and regulations adopted under the Pesticide Notification  
28 Act, to the occupants of all dwellings on abutting property with a

1 boundary that is within one hundred fifty feet of the site of such  
2 application and to owners, owners' agents, or other persons in a  
3 position of authority for all other types of premises that are on  
4 abutting property with a boundary that is within one hundred fifty  
5 feet of the site of such application. The owner or owner's agent  
6 of a multiple-family dwelling shall provide such written notice to  
7 the occupants of such multiple-family dwelling. For all other  
8 types of premises, the owner, owner's agent, or other person in a  
9 position of authority shall post such written notice in a manner  
10 specified by the department.

11 Sec. 5. Section 4 of this act does not apply to:

12 (1) The use of an aerosol product with a directed spray,  
13 in containers of eighteen fluid ounces or less, when used to  
14 protect individuals from an imminent threat from stinging and  
15 biting insects, including venomous spiders, bees, wasps, and  
16 hornets;

17 (2) Application of a pesticide by direct injection into a  
18 plant or the ground;

19 (3) Spot application of a pesticide;

20 (4) Application of antimicrobial pesticides and  
21 antimicrobial products within the meaning of the Federal  
22 Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136(mm) and  
23 136q(h)(2), as such sections existed on the effective date of this  
24 act;

25 (5) The use of nonvolatile insect or rodent bait in a  
26 tamper-resistant container;

27 (6) The use of boric acid and disodium octaborate  
28 tetrahydrate;

1           (7) The use of horticultural soap and oils that do not  
2 contain synthetic pesticides or synergists;

3           (8) Application of a granular pesticide;

4           (9) Emergency application of a pesticide when necessary  
5 to protect against an imminent threat to human health, except that  
6 prior to any such emergency application, the person making such  
7 emergency application shall make a good faith effort to supply the  
8 written notice required under section 4 of this act. Upon making  
9 an emergency application of a pesticide, the person making such  
10 application shall notify the department, using a form developed by  
11 the department for such purposes. The form shall include the name  
12 of the person making the emergency application, the pesticide  
13 business registration number or certified applicator number of the  
14 person making the emergency application, the location of the  
15 emergency application, the date of the emergency application, the  
16 product name and United States Environmental Protection Agency  
17 registration number of the pesticide applied, the reason for the  
18 emergency application, and such other information as the department  
19 deems necessary.

20           Sec. 6.   (1) All persons performing residential lawn  
21 application on an area of more than one hundred square feet shall  
22 affix markers to be placed within or along the perimeter of the  
23 area where pesticides will be applied pursuant to the residential  
24 lawn application. Such markers shall be placed so as to be clearly  
25 visible to persons immediately outside the perimeter of such  
26 property, shall be posted at least twelve inches above the ground,  
27 and shall be at least four inches by five inches in size.

28           (2) The markers required in this section shall be in

1 place at least twenty-four hours prior to the residential lawn  
2 application and on the day of the residential lawn application and  
3 shall instruct persons not to enter the property and not to remove  
4 the signs for a period of at least forty-eight hours. Such  
5 instruction shall be printed in bold letters.

6           Sec. 7. The department shall review any emergency  
7 application form submitted pursuant to section 5 of this act to  
8 ensure that the circumstances warranted the emergency application.  
9 Such forms shall be kept on file by the department for three years  
10 from the date of the emergency application and shall be made  
11 available to any person upon request.

12           Sec. 8. The building operator of any public building who  
13 personally applies or uses, or who contracts for or orders the  
14 application within the interior of any public building of, any  
15 pesticide requiring the direct supervision of a certified operator  
16 or any pesticide which is sold solely for commercial applicator use  
17 and is restricted to uses other than household use shall post a  
18 conspicuous notice in such building at least forty-eight hours  
19 prior to application in order to notify anyone entering or living  
20 in such building that a pesticide is being or is going to be  
21 applied. Such notice shall remain posted until forty-eight hours  
22 following the application.

23           If such pesticide or pesticides are applied on a regular  
24 basis or according to a schedule, such notice may be permanently  
25 displayed and shall include the days or dates on which such  
26 pesticide or pesticides are usually applied. If the pesticide or  
27 pesticides are not applied on a regular basis or according to a  
28 schedule or if the pesticides are applied on a day or date other

1 than the day or date contained on a permanently displayed notice,  
2 notice of the application and the date thereof shall be posted  
3 before the application of any pesticide and shall remain posted for  
4 twenty-four hours following the application. Such notice shall  
5 include (1) a notice of the location and hours during which any  
6 person may obtain information concerning the pesticides applied or  
7 to be applied and inspect and copy the material safety data sheet  
8 and (2) one or more telephone numbers for the building operator at  
9 which emergency information concerning the pesticides applied may  
10 be obtained at any time during the day or night and on any day of  
11 the year.

12           Sec. 9. The building operator shall make available, upon  
13 request and within a reasonable time after the request, the name of  
14 any pesticide used and a copy of the appropriate material safety  
15 data sheet. If the pesticide is to be applied by a commercial  
16 applicator or a certified operator, such commercial applicator or  
17 certified operator shall provide material safety data sheets to the  
18 building operator at the time the contract for service is entered  
19 or renewed. If any additional pesticides are used after the  
20 contract for service is entered, the commercial applicator or  
21 certified operator shall provide additional material safety data  
22 sheets to the building operator.

23           A building operator shall retain for five years all  
24 material safety data sheets and other documents furnished pursuant  
25 to this section. A building operator shall retain statements of  
26 information for two years.

27           Sec. 10. (1) The department shall adopt and promulgate  
28 rules and regulations establishing:

1           (a) Uniform standards for a consumer pesticide use  
2 information sign that shall be placed in retail establishments that  
3 sell general-use pesticides for commercial or residential lawn  
4 application. The sign shall contain the following information:

5       (i) A warning notice directing consumers to follow directions on  
6 labels; (ii) a provision to inform the customer of the notice  
7 requirements set forth in the Pesticide Notification Act; and (iii)  
8 a recommendation that the customer notify neighbors prior to the  
9 application of pesticides so that such neighbors may take  
10 precautions to avoid pesticide exposure;

11           (b) The content and form of the written notice required  
12 by section 4 of this act which shall include, but need not be  
13 limited to: (i) The address of the premises where application is  
14 to be done; (ii) the name, telephone number, and pesticide business  
15 registration number or certified applicator number of the person  
16 providing the application; (iii) the specific date of each  
17 pesticide application and two alternative dates to the proposed  
18 date of application when, due to weather conditions, the pesticide  
19 application of the proposed date is precluded; (iv) the product  
20 name or names and the United States Environmental Protection Agency  
21 registration number or numbers of the pesticide or pesticides to be  
22 applied; and (v) a prominent statement that reads: "This notice is  
23 to inform you of a pending pesticide application to neighboring  
24 property. You may wish to take precautions to minimize pesticide  
25 exposure to yourself, family members, pets, or family possessions.  
26 Further information about the product or products being applied,  
27 including any warnings that appear on the labels of such pesticide  
28 or pesticides that are pertinent to the protection of humans,



1 animals, or the environment, can be obtained by calling the  
2 National Pesticides Telecommunications Network." The department  
3 shall review and revise as necessary the telephone number required  
4 to appear in notices pursuant to this section; and

5 (c) The manner in which persons providing commercial lawn  
6 application shall supply written notice as required under the  
7 Pesticide Notification Act, including mailing or leaving the notice  
8 with a responsible adult or in a conspicuous location on the  
9 abutting property, the manner in which the owner or owner's agent  
10 of a multiple-family dwelling under section 4 of this act shall  
11 supply such written notice to the occupants of such multiple-family  
12 dwelling pursuant to such section, and the manner in which the  
13 owner, owner's agent, or other person in a position of authority  
14 for all other premises covered under such section shall supply such  
15 written notice. Such rules and regulations shall specify a manner  
16 in which persons providing commercial lawn applications may provide  
17 an option to occupants of dwellings to decline further notice.

18 (2) The department shall prepare public educational  
19 materials explaining the requirements of the Pesticide Notification  
20 Act and the health effects of lawn care pesticides on humans and  
21 the environment.

22 Sec. 11. (1) Any person who violates the Pesticide  
23 Notification Act or any rule, regulation, or order issued under the  
24 act shall be liable for a civil penalty not to exceed five hundred  
25 dollars for each offense, and in the case of a continuing  
26 violation, each day of violation shall constitute a separate  
27 offense. A person shall also be subject to a restraining order, a  
28 temporary or permanent injunction, or a mandatory injunction if

1 such person has violated, is violating, or is threatening to  
2 violate the act, the rules and regulations adopted and promulgated  
3 pursuant to the act, or any final order of the department. The  
4 district court of the county where the violation has occurred, is  
5 occurring, or is about to occur has jurisdiction to grant such  
6 relief upon good cause shown. Relief may be granted  
7 notwithstanding the existence of any other remedy at law and shall  
8 be granted without bond.

9 (2) The Attorney General or the county attorney of the  
10 county in which a violation of such sections has occurred, is  
11 occurring, or is about to occur, when notified by the department of  
12 such violation or threatened violation, shall pursue appropriate  
13 proceedings without delay pursuant to this section.

14 (3) Any civil penalty assessed under this section and  
15 unpaid shall constitute a debt to the state which may be collected  
16 in the manner of a lien foreclosure or sued for and recovered in a  
17 proper form of action in the name of the state in the district  
18 court of the county in which the violator resides or owns property.  
19 An action to collect a civil penalty shall be brought within two  
20 years after the alleged violation providing the basis of the  
21 penalty, except that if the cause of action is not discovered and  
22 could not be reasonably discovered within the two-year period, the  
23 action may be commenced within two years after the date of  
24 discovery or after the date of discovery of facts which would  
25 reasonably lead to discovery, whichever is earlier. The department  
26 shall, within thirty days after receipt of the civil penalty, remit  
27 the civil penalty to the State Treasurer for credit to the  
28 permanent school fund.

1                   Sec. 12.   If any section in this act or any part of any  
2   section is declared invalid or unconstitutional, the declaration  
3   shall not affect the validity or constitutionality of the remaining  
4   portions.